

ROUTH CRABTREE OLSEN, P.S.
3535 FACTORIA BLVD. SE, SUITE 200
BELLEVUE, WA 98006
TELEPHONE (425) 458-2121
FACSIMILE (425) 458-2131

Honorable Judge Marc L. Barreca
Chapter 13
Hearing Location: Seattle
Hearing Date: September 9, 2010
Hearing Time: 9:30 a.m.

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re:

JERRY R ROBERSON and
DEBORAH D ROBERSON,

Debtors.

Chapter 13 Bankruptcy

No.: 10-17460-MLB

OBJECTION TO CONFIRMATION OF
AMENDED PLAN DATED AUGUST 2, 2010
BY WELLS FARGO BANK, NA

COMES NOW Wells Fargo Bank, NA ("Creditor"), and objects to confirmation of the proposed Amended chapter 13 plan (The "Plan") of Jerry R Roberson and Deborah D Roberson ("Debtor" collectively hereafter). The basis for this objection is that the Plan does not comply with the provisions of Title 11, chapter 13 of the United States Bankruptcy Code and thus should not be confirmed by the Court.

I. BACKGROUND

On or about August 11, 2008, Jerry R Roberson and Deborah D Roberson, executed and delivered a note in favor of Wachovia Mortgage, FSB in the original principal amount of \$313,381.00. This Note was secured by a Deed of Trust ('Deed') encumbering real property commonly described as 23010 130th Pl SE Kent, WA 98031 ('Property'). Creditor is the holder of the note or services the note for the holder. On June 29, 2010, Debtor filed for protection under Title 11, chapter 13 of the United States Code under cause number 10-17460-MLB in the above listed court.

The outstanding balance due on the Note as of filing is approximately \$308,658.84. As of the same date the loan is contractually due for the February 1, 2010 payment. The pre-petition arrears,

1 including payments, late charges, escrow advances and accrued fees and costs are \$14,096.09 per
2 Creditor's filed proof of claim. The current ongoing monthly payment is \$2,424.33.

3 4 **II. ARGUMENT AND AUTHORITY**

5 Creditor objects to confirmation of the Plan to the extent that Debtor would fail to maintain
6 Creditor's loan post-petition. The Plan provides that Debtor's attorney fees will be paid prior to all
7 creditors. There are insufficient funds available with which to satisfy Debtor's attorney fees as proposed
8 while maintaining Creditor's post-petition loan payments. Under 11 U.S.C. § 1325 (a)(1) and 1322
9 (b)(2) a plan may not modify the rights of a holder of a claim secured only by an interest in real property
10 that is the Debtor's personal residence. Failure to maintain Creditor's loan impermissibly modifies
11 Creditor's rights.

12 Creditor further objects to confirmation of the Plan as it is not adequately funded and will not
13 satisfy Creditor's pre-petition arrears. Under 11 U.S.C. § 1325 (a)(1) and 1322 (b)(2) a plan must
14 provide for the cure of an existing default within a reasonable time and require the maintenance of
15 payments while the case is pending on a secured claim on which the last payment is due after the date on
16 which the final payment under the plan is due. In the case at bar, Debtor proposes a monthly plan
17 payment of \$2,939.19 to fund the Chapter 13 plan. After deducting the trustee's fee estimated at 7%, the
18 ongoing loan payment owing to Creditor in the amount of \$2,424.33 and an automobile loan payment in
19 the amount of \$189.00 and a minimum payment of \$12.00 necessary to satisfy Debtor's attorney fees,
20 approximately \$108.00 remains for distribution to creditors. A monthly payment in the amount of
21 \$235.00 is necessary to cure Creditor's loan arrearage claim within the maximum 60 month plan term.
22 There are insufficient funds to cure Creditor's arrearage claim during the life of the plan. Therefore, the
23 Chapter 13 plan is not adequately funded or feasible.

24 **III. CONCLUSION**

25 For all of the above reasons, the proposed Chapter 13 plan fails to comply with the requirements
26 of Title 11 of the United States Code. Therefore, Creditor respectfully requests the Court deny

1 confirmation of the proposed Chapter 13 plan. If the Court sustains this objection and denies
2 confirmation, Creditor respectfully requests that the Court set a deadline by which an amended plan is to
3 be filed.

4 DATED this 2nd day of September, 2010.

5 **ROUTH CRABTREE OLSEN, P.S.**
6 Attorneys for Creditor

7 /s/ Jennifer Aspaas
8 By: Jennifer Aspaas, WSBA# 26303
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